

**Letter of Findings Number: 01-20120637P
Individual Income Tax-Penalty
For the Year 2011**

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayers protest the imposition of the ten percent negligence penalty.

STATEMENT OF FACTS

Taxpayers are a resident married couple. Taxpayers filed a joint income tax return with the Indiana Department of Revenue ("Department") for the year in question and received a refund in the amount of \$6,896. However, shortly thereafter, Taxpayers' accountants determined that the wrong return had been filed, as they had only expected Taxpayers to receive a refund of \$1,909. The corrected return was filed with the Department for the year at issue, and Taxpayers repaid the appropriate amount of tax and interest due. However, the Department issued proposed assessments for a ten percent negligence penalty for the year at issue. Taxpayers protest the imposition of the negligence penalty. An administrative hearing was conducted and this Letter of Findings results. Further facts will be provided as necessary.

I. Tax Administration–Negligence Penalty.

DISCUSSION

Taxpayers protest the imposition of the ten percent negligence penalty on Taxpayers' failure to file the correct return.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, [45 IAC 15-11-2](#) further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

After review of the documentation and analysis provided in the protest process, Taxpayers have affirmatively established that their failure to file the correct return was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayers' protest is sustained.

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